

FILED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

2014 APR -7 A 9:52

U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

MICHAEL MARCHIONE,
Plaintiff,

v.

DR. RICHMOND J. RAMIREZ, MD and
TRI-TOWN ECONOMIC OPPORTUNITY
COMMITTEE,
Defendants.

C.A. NO.:

CA 14 - 173 M-PAS

NOTICE OF REMOVAL

**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND:**

1. On or about February 6, 2014, Plaintiff Michael Marchione filed a Complaint in the State of Rhode Island and Providence Plantations, Superior Court, against Defendants, Dr. Richmond J. Ramirez, M.D. and Tri-Town Economic Opportunity Committee, Case No. 14-0538. The Complaint alleges state law causes of action for negligence against the Defendants.

2. The attached documents are copies of the Complaint and Summons served on the Registered Agent for Service for Defendant, Tri-Town Economic Opportunity Committee on February 7, 2014. Certified or attested copies of all records and proceedings in the State of Rhode Island Superior Court, and a certified or attested copy of all docket entries there, including the filing of a copy of this Notice of Removal, will be listed with this Court within ten days as required by District of Rhode Island Local Rule 81(b).

3. Pursuant to 28 U.S.C. § 2679(b)(1), the exclusive remedy for personal injury arising or resulting from the negligent or wrongful acts of an employee of the United States while acting within the scope of his employment is action against the United States pursuant to 28 U.S.C. § 1346(b).

4. Furthermore, 28 U.S.C. § 2679(d)(2) provides: “[u]pon certification by the Attorney General that the defendant employee was acting within the scope of his . . . employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States . . . and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.”

5. Defendant Ramirez is an employee of the United States Department of Health and Human Services, a federal agency.

6. The allegations in the Complaint arise out of seeking medical care for a work-related injury he sustained on or about April 12, 2013, while visiting Defendant’s office at Tri-Town Health Center.

7. The attached certification of Peter F. Neronha, United States Attorney for the District of Rhode Island, the Attorney General’s designee, states that he has read the Complaint in this action and that on the basis of the information now available to him, finds and certifies that Defendant Richmond J. Ramirez, M.D., was acting within the scope of his employment as an employee of the United States at the time of the incident out of which the Plaintiff’s claims arose.

Accordingly, this action is properly removed pursuant to 28 U.S.C. § 2679(d)(2).

8. Additionally, as Plaintiff served Defendant, Tri-Town Economic Opportunity Committee's, registered agent on February 7, 2014, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).

9. Notice of removal has been provided this date to Plaintiff and the Clerk of the Providence, Rhode Island Superior Court.

10. No defenses, including immunity are waived by the filing of this Notice of Removal.

Wherefore, notice is respectfully given that the captioned matter is removed to the United States District Court for the District of Rhode Island.

Respectfully submitted,

PETER F. NERONHA
United States Attorney



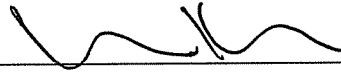
LESLIE J. KANE
Assistant U.S. Attorney
U.S. Attorney's Office
50 Kennedy Plaza, 8th Floor
Providence, RI 02903
Tel.: (401) 709-5000
Fax: (401) 709-5017
Email: leslie.kane@usdoj.gov

Dated: April 7, 2014

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2014, I caused a copy of the within Notice of Removal to be forwarded, by postage prepaid mail, to:

Benjamin K. Lemcke, Esquire
Law Office of Benjamin K. Lemcke
984 Charles Street
North Providence, Rhode Island 02904

A handwritten signature in black ink, appearing to read 'Leslie J. Kane', is written over a horizontal line.

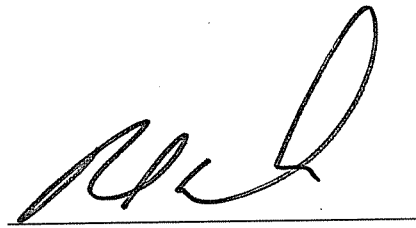
LESLIE J. KANE
Assistant U.S. Attorney

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

CERTIFICATION

I, Peter F. Neronha, am the United States Attorney for the District of Rhode Island, and my office is responsible for litigating the captioned action. I have read the Complaint filed in Marchione v. Ramirez, M.D., et al. Pursuant to 28 U.S.C. § 2679, and by virtue of the authority vested in me by the Attorney General of the United States under 28 C.F.R. § 15.3 and its appendix, on the basis of the information now available with respect to the allegations, I hereby find and certify that Defendant Dr. Richmond J. Ramirez, MD was acting within the scope of his employment as an employee of the United States at the time of the incident out of which the Plaintiff's claims arise.

Dated this 4th day of April, 2014.


PETER F. NERONHA
United States Attorney
District of Rhode Island